IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.670 OF 1993.

Khalil Tainul Jamdar since
deceased through legal heirs
Habib Khalil Jamdar & ors. : Appellants.

versus

Sambhaji Chandrappa Suryavanshi
and ors. : Respondents.

Mr.Prasad Rane h/f Mr.R.V.More for the appellants.
Mr.D.R.Mahadik i/by S.R.Sing for respondent No.3.

CORAM : D.G.DESHPANDE,J.

DATED : 3rd March 2005.

ORAL ORDER

1. Heard advocates for the appellants and respondent No.3. This appeal is filed by the original claimant against the award passed by the Motor Accident Claims Tribunal on 12th July 1989. The only grievance of the claimant is that even though the claimant was awarded Rs.2,11,1000/- as

compensation, no interest is awarded to him and, the ground given by the tribunal was that initially when the claim petition was filed, the interest was not claimed and when it was subsequently amended there also there was no prayer for interest. Therefore, the tribunal refused to grant the interest.

2. The counsel for the appellants contended that if the claim of the appellants was found to be real, genuine and proved, then under Section 110(cc) of the Motor Vehicles Act 1939, the Court ought to have granted interest. Though the word "may" has been used in Section 110(cc), since it is a beneficial legislation it ought to have been interpreted as "shall" and interest should have been awarded.

3. As against this, the counsel for the respondent Insurance company firstly contended that the appeal against the original owners of the vehicle i.e. Respondent Nos.1 and 2 stood dismissed for non-prosecution against them vide Additional Registrar’s order dated 13.12.1994 and if the original owners of vehicle exonerated now on account of dismissal of appeal, then insurance

company - remaining respondent cannot be saddled with interest. Because the Respondent-Insurance Company incurred liability because of the indemnity given and, when the original claim is not there in the appeal, the interest cannot be awarded.

. Counsel for the Insurance Company relied upon the judgment of the Punjab & Haryana High Court reported in **1989 (1) TAC 17 [Bimal Devi v. National Insurance Co. & anr).** He drew my attention to Head Note B which is in respect of Section 92-A wherein it is held that award under Section 92-A is final between the owner of the offending vehicle and claimant. I have gone through the judgment. It does not deal with the question involved in this appeal viz. Whether interest can be awarded against the Insurance Company after appeal against the owner of the vehicle stood dismissed.

. He also relied upon the judgment of this Court reported in **2000 ACJ 748 (Skoda Afonso (deceased) though L.Rs. v. Motor Accidents Claims Tribunal, Panaji, Goa & ors.)**. In that matter the question involved was that, whether on

the death of the claimant during pendency of claim application filed by the him on account of injuries suffered by him, the cause of action would survive for the purpose of prosecuting the claim petition by his legal representatives. The question was answered by this Court and, the Court held that if the death of the claimant was on account of the injuries suffered in the accident, then cause of action would survive in favour of the legal representatives in so far as loss to the estate is concerned.

4. In the present appeal the original claimant Khalil died and his legal representatives were already brought on record under order dated 8.2.2005. This question which is now being raised by the advocate for the Insurance Company should have been raised when the legal representatives of the deceased appellant/claimant were brought on record. That question was not raised and the legal representatives came to be brought on record with all rights available to the original claimant. The question now involved is, whether upon dismissal of the claim petition against the original owners, there can be any order for

awarding interest and, secondly, whether the order can be against the Insurance Company which is the surviving respondent.

5. The answer to both the questions has to be given in the affirmative. Firstly, because if the claim petition was allowed, then tribunal should have awarded interest and, secondly, because the liability of the Insurance Company is co-extensive with that of the original owner which is joint and several liability. Therefore, the matter can be proceeded with by the appellant against any-one. In these circumstances, the appeal is required to be allowed. It is true that it was open to the appellant to claim interest from the tribunal when the claim petition was amended, at least at that stage the interest should have been claimed. So in a sense the appellants/claimant was at fault for not claiming the interest from the tribunal. Therefore, in these circumstances, I pass the following order :-

:ORDER:

The respondents shall be liable to pay interest at the rate of 9% p.a. from the

date of the award of tribunal dated 12th July 1989 till the date of the payment

[D.G.DESHPANDE]

03/03/2005 JUDGE.